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12 as Trustee of SORESENSEN RESEARCH AND
13 DEVELOPMENT TRUST
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15 UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 JENS ERIK SORESENSEN, as Trustee of) Case No. 08 CV 00095 JW
19 SORESENSEN RESEARCH AND)
20 DEVELOPMENT TRUST,) **DECLARATION OF MELODY A.**
21) **KRAMER IN SUPPORT OF**
22) **PLAINTIFF'S MOTION FOR**
23) **APPLICATION OF 35 U.S.C. § 295**
24) **PRESUMPTION OF**
25) **INFRINGEMENT**
26)
27) Date: June 9, 2008
28) Time: 9:00 A.M.
) Courtroom 8, 4th Floor
) Judge: The Hon. James Ware
)
) *Oral Argument is Respectfully Requested*
) *at Hearing on This Matter.*
)
)
)

1 I, MELODY A. KRAMER, declare:

2 1. I am not a party to the present action. I am over the age of eighteen. I
3 have personal knowledge of the facts contained within the following paragraphs, and
4 could and would competently testify thereto if called as a witness in a court of law.

5 2. At all times relevant herein I have been an attorney for Sorensen
6 Research and Development Trust ("SRDT"), Plaintiff in the above-captioned matter.

7 3. This declaration is made in support of Plaintiff's Motion for Application
8 of 35 U.S.C. § 295 Presumption of Infringement.

9 4. On April 16, 2005, Plaintiff's counsel, Mr. Kaler, sent a formal request
10 to Defendant Lexar Media, Inc., ("Lexar") under the United States Process Patent
11 Amendments Act of 1988 (35 U.S.C. § 295) seeking factual information necessary to
12 verify whether Lexar's Media JumpDrive 128MB, sold, imported into, or used in the
13 United States was made using the process patented in United States Patent No.
14 4,935,184 (the '184 patent"). The letter set forth a detailed analysis of the existence
15 of a substantial likelihood that the Accused Products were manufactured with a
16 method that infringed on the '184 patent, and enclosed drawings, a claim chart, and a
17 copy of the '184 patent. Attached hereto as Exhibit A is a true and correct copy of
18 the letter dated April 16, 2005.

19 5. In a letter dated May 19, 2005, counsel for Lexar, Mr. Flagel, claimed
20 that he had received written confirmation from its suppliers asserting that they did
21 not infringe on the '184 patent. The foreign manufacturers were not identified, and
22 there was no explanation of how or who had conducted any investigation or what the
23 extent of the investigation had been. Attached hereto as Exhibit B is a true and
24 correct copy of the letter dated May 19, 2005.

25 6. After a number of unsuccessful exchanges, Plaintiff requested Lexar
26 produce a legally admissible declaration by a U.S. based Lexar officer who had
27 personal knowledge of the process used to fabricate each of the Accused Products.
28 Lexar failed and refused to provide the requested declaration. Plaintiff also requested

1 copies of the claimed written confirmations of non-infringement from Lexar's
2 suppliers, but Lexar refused to produce the claimed confirmations. Attached hereto
3 as Exhibit C is a true and correct copy of letter dated November 7, 2007.

4 7. Lexar was again advised of Plaintiff's intent to invoke the 35 U.S.C. §
5 295 presumption against Lexar if properly verified process information was not
6 provided by letter dated December 12, 2007. Attached hereto as Exhibit D is a true
7 and correct copy of letter dated December 12, 2007.

8 8. On January 7, 2008, this case was filed, accusing Defendant of
9 infringing on the '184 patented process in the manufacturing, import, sale and/or
10 offer for sale of the LEXAR MEDIA JumpDrive 128MB ("Accused Product").
11 Although Lexar has never identified its suppliers in any manner, the packaging for
12 the Accused Product indicates that it is "Made in China." Attached hereto as Exhibit
13 E is a true and correct copy of a product label.

14 I declare under penalty of perjury under the laws of the United States of
15 America that the foregoing paragraphs are true and correct to the best of my own
16 personal knowledge.

17 DATED this Thursday, April 10, 2008.

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20 /s/ Melody A. Kramer
21 Melody A. Kramer Esq.
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